

December 27, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION ON APPLICATION FOR PRELIMINARY PLAT
AND REVISED DECISION ON THRESHOLD DETERMINATION APPEAL**

SUBJECT: Department of Development and Environmental Services File No. **L99P0005**

STAR LAKE TOWNHOMES
Preliminary Plat Application and
Appeal of SEPA Threshold Determination

Location: Between South Star Lake Road and South 282nd Street (if extended), and between 32nd Avenue South (if constructed) and Interstate-5.

Applicant: HBR Enterprises et al, *represented by*
Michael E. Davis
27013 Pacific Highway South PMB #353
Des Moines, WA 98198
Telephone: (253) 859-3750

HBR Enterprises, et al, *also represented by*
Robert Johns, Attorney at Law
Cypress Building, Suite 102
1500 – 114th Avenue SE
Bellevue, WA 98004
Telephone: (425) 451-2812
Facsimile: (425) 451-2818

Appellant: **Gregory Karalus**
27831 – 32nd Place South
Auburn, WA 98001

King County: Department of Development and Environmental Services
Land Use Services Division, *represented by*
Lanny Heno
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7168
Facsimile: (206) 296-7051

SUMMARY OF DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions
Examiner's Decision:	Approve, subject to conditions

PRELIMINARY MATTERS:

Application or petition submitted:	April 2, 1999
Complete application:	April 2, 1999

EXAMINER PROCEEDINGS:

Hearing Opened:	November 3, 2000
Hearing Closed:	December 5, 2000

The record was re-opened administratively on December 20, 2000 for receipt of a letter from the Applicant modifying the proposal.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Intersection safety
- Level of service
- Wetland alteration
- On-site recreation
- Wildlife

SUMMARY:

The preliminary plat application is granted, subject to conditions. Based on a revised proposal for traffic mitigation, the SEPA appeal is denied.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information:**

Owner:	Cecilia Whitman 925 North 70 th Street Seattle, WA 98103
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|----------------------------|---|
| Developer/Applicant: | Michael E. Davis
HBR Enterprises
27013 Pacific Hwy. South
PMB #353
Des Moines, WA 98198
Telephone: (253) 859-3750 |
| Engineer: | Touma Engineers & Land Surveyors
6632 South 191 st Place, Suite E-102
Kent, WA 98032
Telephone: (425) 251-0665 |
| Location: | Lying generally between South Star Lake Road and South 282 nd Street (if extended), and between 32 nd Avenue (if constructed) and Interstate-5. |
| STR: | Lying in the SE ¼ of the NE ¼ and the NE ¼ of the SE ¼ of Section 33, Township 22N, Range 4E |
| Zoning: | R-4 |
| Acreage: | 15.76 |
| Number of Lots: | 45 |
| Density: | 2.86 dwelling units per acre |
| Typical Lot Size: | Ranges from 1,925 to 4,487 square feet |
| Proposed Use: | Townhouses |
| Sewage Disposal: | Lakehaven Utility District |
| Water Supply: | Highline Water District |
| Fire District: | King County Fire District No. 39 |
| School District: | Federal Way School District No. 210 |
| Complete Application Date: | April 2, 1999 |
2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the November 3, 2000 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
 3. HBR Enterprises has filed a preliminary plat application to subdivide 15.76 acres into 45 lots for the development of townhouses. The site is located just south of South Star Lake Road and abuts Interstate 5 along its western boundary. The wooded property is undeveloped and dominated by a complex of on-site wetlands. In addition, a ridge comprising a glacial esker is located in the central portion of the property along a north/south axis.

SEPA APPEAL:

4. A Determination of Non-significance was issued under SEPA for this proposal by King County DDES on September 1, 2000. This DNS was appealed by resident Michael

- Karalus. Mr. Karalus' appeal alleges traffic level of service and safety hazard impacts from the project at the intersection of South Star Lake Road and Military Road South as well as potential noise impacts from the removal of wetland trees that muffle freeway noises. Since pursuant to County Code wetland vegetation may not be removed, the noise impact issue was not the subject of substantial testimony and is largely moot.
5. Star Lake Road, Military Road and Interstate 5 all converge at the northwest corner of the Applicant's property. At this location, I-5 trends in a slightly northwesterly direction while Military Road crosses under it along a southwest to northeast tangent. The eastern leg of Star Lake Road intersects Military Road on the east side of I-5 while the western leg joins it on the west side of the freeway. Due to the resultant oblique angles, the eastern and western intersections of Star Lake Road with Military Road are approximately 500 feet apart. The west leg intersection is the further south and has a recently installed traffic signal. The east leg intersection of Star Lake and Military Roads has no signal but is governed by a stop sign at the western terminus of Star Lake Road. The stated objective of Mr. Karalus' appeal is to have the County require the Applicant to construct a new signal at the Military Road intersection with the eastern leg of Star Lake Road. At this location, Military Road is a two-lane minor arterial while Star Lake Road is a two-lane neighborhood collector.
 6. Primarily owing to new residential development in the Star Lake area, the level of service at the South Star Lake Road east leg intersection with Military Road South is projected to deteriorate to a LOS F in 2003, the horizon year for the Star Lake Townhome development, with or without the project. The cause for this poor level of service is the delay encountered at Military Road by westbound traffic on Star Lake Road. Due to high levels of morning and afternoon commuter traffic on Military Road, westbound vehicles on Star Lake Road seeking to make a left turn experience long waits. Moreover, because of the lack of a right turn lane, the relatively few left-turning vehicles have the effect of impeding right-turning traffic as well.

The signal installed at the west leg intersection for Star Lake Road and Military Road appears to be a mixed blessing with respect to facilitating westbound left turns from the eastern leg. If traffic flows on Military Road are not at maximum load, the new signal creates platooning opportunities for westbound left-turning vehicles. On the other hand, during the heaviest rush hour periods, southbound traffic flows on Military Road are sufficiently great that the west leg signal simply backs up traffic north past the east leg intersection and precludes left-turning traffic from entering the queue.
 7. Perhaps the most remarkable aspect of the traffic data generated by the Applicant regarding this intersection is that adding a mere handful of new westbound left-turning vehicles to the existing peak hour congestion mix creates a greatly increased level of service impact. The Applicant's 1999 traffic study, although performed for a 65 lot total, demonstrates that adding eight A.M. westbound left-turning trips from Star Lake Townhomes to the horizon year 2003 traffic mix at the South Star Lake Road/Military Road South intersection would more than double the westbound delay from 118 to 270 seconds. Similarly, adding 6 westbound left turns in the P.M. peak hour increases the westbound delay in the horizon year from 336 to 709 seconds. With the decrease in lots to 45, the westbound left turn movements attributable to Star Lake Townhomes are

reduced to 6 in the A.M. and 4 in the P.M., so obviously the increase in delay would be less. Nonetheless, the basic point is that as the opportunities for westbound left turns decrease, each new left turn added to the total has a disproportionately greater impact. The 1999 traffic study acknowledges this effect as follows:

“The trips associated with the proposed townhomes have their greatest impact on the westbound movement at the intersection, which is projected to operate at a level of service “F”, with or without the townhomes, although the overall level of service is “E” or better. Much of the increase in delay is a function of the projected increase in traffic volumes on Military Road, resulting in fewer gaps for the westbound movement to utilize.”

8. Despite the serious level of service impacts associated with westbound traffic movements on Star Lake Road, including the large adverse effects associated with incremental increases in left-turning vehicles, the fact remains that Star Lake Townhomes, as proposed, will not contribute sufficient traffic to the Military Road South intersection to meet the 30 peak hour trip threshold required under the County’s Intersection Standards for finding a significant adverse level of service impact. At 45 lots this project is predicted to add 19 vehicle trips in the A.M. peak hour and 24 trips during the P.M. peak hour to the Military Road South intersection with South Star Lake Road. As the Appellant has pointed out, the project’s trip generation figures are based on standard ITE Manual tables that document a trip generation rate for townhouses and condominiums that is about 50% of the single-family residential rate.

Mr. Karalus argues that in a tight, expensive housing market, larger townhouse units such as those proposed by the Applicant will be attractive to younger family purchasers who would normally participate in the detached single-family market. He contends, therefore, that a higher trip rate would be appropriate for the Star Lake Townhomes project. While there is some intuitive merit to Mr. Karalus’ position, in the absence of actual trip generation studies supporting this hypothesis, assigning a higher trip generation rate to the Applicant’s project would be mere speculation. The Appellant cannot sustain his burden of proof based on such speculative propositions.

9. A second set of issues concerning the South Star Lake Road east leg intersection with Military Road South is concerned with the problem of safety hazards. Within the hearing testimony numerous area residents described the safety risks resulting from southbound traffic on Military Road attempting to turn left onto the east leg of Star Lake Road. Although only two lanes in width, Military Road is a major commuter corridor, and traffic moves briskly. This tendency is accentuated by the fact that the Star Lake Road intersection is at a low point topographically, and traffic on Military approaching from either direction is traveling downhill. In the absence of a left turn pocket, southbound vehicles on Military Road turning east onto Star Lake Road are forced to stop in the middle of traffic to wait for a turning opportunity. The unanimous testimony of area residents was that this is a frightening experience during rush hour traffic. In order to avoid stopping, speeding southbound cars routinely pass left-turning vehicles on the west side shoulder of Military Road. For left-turning vehicles, the fear of a rear-end collision is a constant concern, and near-misses are commonplace. Four neighborhood residents who testified at the hearing related that either they or members of their immediate families had

- been rear-ended at this intersection. Moreover, the signal further south at the Star Lake west leg intersection can be a complicating factor as well. This is because cars that swerve onto the shoulder to avoid the waiting left turn vehicles sometimes are forced to make a sudden stop, after passing on the right, because vehicles are queued north of the signal.
10. A further safety hazard results from the fact that the paved shoulders along Military Road are used by pedestrians and bicyclists, especially during summer months. Star Lake lies immediately northeast of this intersection, and pedestrians and bicyclists who are making a loop around the lake are required to walk along the Military Road shoulder to complete the western portion of the circuit. In addition, the Military Road shoulders in this location are used by students living in the neighborhood south of Star Lake who walk to and from Totem Junior High School further to the north.
 11. Finally, the level of service issues previously described also exacerbate the safety issues. This is because vehicles subject to a long wait to make a left turn are likely, out of desperation, to make sudden movements if the slightest opening appears. Area residents report that the eastern shoulder of Military Road north of the Star Lake Road east leg intersection has also become a risky area for pedestrians because southbound left-turners will nose into the oncoming northbound lane, causing northbound traffic to swerve onto the shoulder. The possible existence of westbound left-turn traffic also waiting on Star Lake Road is, of course, simply another complication in this equation.
 12. In response to these anecdotal neighborhood descriptions of safety risks at the Military Road/Star Lake Road intersection, the Applicant has pointed out that the actual reported accident rates for this intersection are within a normal range and, indeed, may have decreased in the two years since the signal further south was installed. Mr. Karalus responded to this data with information derived from Federal Way Fire Department emergency logs showing that 25 injury accident responses were made in the immediate vicinity of the Star Lake/Military intersection in the last 3 years. Similar information was provided by the Applicant's traffic engineer in a May 31, 2000 memorandum that includes accident data for the stretch of Military Road north of the Star Lake intersection:

“Other data provided by the County indicates that the section of Military Road between South 272nd Street and I-5 had a 1998 accident rate of 4.25 accidents per million vehicle miles, as compared to the average of 2.05 for other minor arterials in the County. Twenty-nine accidents were reported in the 0.35 mile section of the roadway, 4 of which would have occurred at the intersection of Star Lake Road and Military Road.”
 13. What this additional data indicates is that a significant portion of the accidents associated with safety hazards in the vicinity of the Star Lake Road/Military Road intersection are not being reported as specifically identified with the intersection itself. Based on the hearing testimony, the reason for this discrepancy is not difficult to envision. If a southbound vehicle on Military Road is waiting to make a left turn at Star Lake Road and is rear-ended by another speeding car, the accident is reported for the Star Lake intersection. If, on the other hand, 4 or 5 cars are backed up behind the vehicle waiting to turn left, and the northern-most vehicle in the queue is rear-ended, the accident is

reported as occurring on Military Road away from the intersection. In both instances, however, the cause of the accident is failure to stop for a vehicle waiting to turn left at the Star Lake Road intersection.

14. In response to an abundance of testimony from neighborhood residents describing hazardous conditions and accident experiences, DDES staff revised its recommendation to include a requirement that the Applicant construct a southbound left turn pocket on Military Road at the Star Lake Road intersection.

The recommendation was based upon an analysis by the King County Department of Transportation Senior Engineer, who determined both that the Applicant's project would contribute significantly to a hazardous condition and left turn lane warrants would be met at this intersection. The Applicant did not contest staff's determination that a hazardous condition will exist at the Star Lake Road/Military Road intersection, but initially opposed the imposition of a condition on the basis that placing a left turn pocket construction requirement on this Applicant would be disproportionate to the project's impacts. By letter dated December 20, 2000, the Applicant revised the plat proposal to include the left-turn pocket recommended by staff.

PLAT ISSUES:

15. The Applicant proposes to fill a small isolated wetland located at the northwest corner of the plat property to create RD facilities for the treatment and storage of surface water drainage. This wetland is less than 4,000 square feet in size and has been previously disturbed by a trail crossing and fugitive dumping of trash. It has no obvious outlet or inlet and is probably fed by groundwater. Mitigation for filling this wetland will consist of the dedication of upland forest areas in the southern portion of the site.
16. KCC 21A.24.330.K authorizes the alteration of one isolated wetland on a parcel 20 acres in size or less so long as its functions are replaced elsewhere on the site. KCC 21A.24.300.H allows the use of wetlands for surface water management activities and facilities under certain specified conditions. The Applicant's proposal qualifies as a single wetland alteration pursuant to subsection K.
17. Wetlands A and C are enclosed within the proposed loop road that will serve the lots of the plat. In order to accommodate site development, buffer averaging will need to be implemented, with buffers reduced in some locations to less than half their required widths. Condition No. 14.c has been revised to reflect the fact that a conceptual plan for buffer averaging has been reviewed and approved by staff.
18. The Applicant proposes to meet its on-site recreation space requirements by provision of an open space tract on the south side of the loop road adjacent to the large tract containing the three major on-site wetlands. The southwest half of the proposed open space tract contains a portion of the on-site esker, and the Applicant desires to preserve the esker and its vegetation cover in its natural state. Since there appears to be ample room for development of a children's play area adjacent to the roadway, Condition No. 15 has been modified to recognize that maintenance of the esker in its natural condition provides significant recreational values.

19. Area residents testified at the public hearing that eagles are occasionally sighted roosting in the trees around Star Lake. The Applicant's wildlife consultants have examined available records and determined that no nesting tree exists in this immediate area. While winter foraging may occur within the vicinity of Star Lake, there is no reason to believe that the Applicant's property possesses unique habitat value for bald eagles making it necessary to impose exceptional protective restrictions.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
2. The SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental traffic impacts of the Star Lake Townhomes proposal at the intersection of South Star Lake Road and Military Road South.
3. SEPA review of traffic safety hazards at the South Star Lake Road/Military Road South intersection was based primarily on the accident data contained within the Applicant's traffic studies. As disclosed at the public hearing, the accident figures assigned to this intersection do not adequately represent the level of danger attributable to its deficiencies. These deficiencies have been documented by evidence of frequent near-miss accident occurrences, dangerous passing of left-turning vehicles on the Military Road shoulders, pedestrian and bicycle use of the Military Road South shoulders, and the high probability that accidents relating to the intersection have been assigned to the adjacent road sections. Based on the hearing testimony, the Department reversed its position with respect to the safety impacts of the proposal and now finds them to be significant and adverse.
4. We concur that the traffic impacts from the Star Lake Townhome proposal will have significant adverse environmental impacts at the northern South Star Lake Road/Military Road South intersection and its adjacent approach lanes and shoulders because the additional traffic from the proposal will create a substantially increased hazard to safety. The record demonstrates that while dangerous conditions presently exist, the additional traffic that the Star Lake Townhouse proposal will contribute to left-turning movements at the intersection will substantially increase the level of danger during the morning and evening rush hours. Because there are so few safe left-turning opportunities during congested periods, a relatively small contribution to left-turning traffic can greatly increase overall intersection delays, resulting in increased frustration and risk-taking by drivers.
5. On December 20, 2000, the Applicant modified its proposal to include construction of a southbound left-turn pocket at the Star Lake Road intersection. With this new mitigation included, the decision of the SEPA official is not clearly erroneous, is

supported by the evidence of record, and assures that there is no probability of significant adverse environmental impacts. Accordingly, the order within the SEPA appeal decision dated December 13, 2000 requiring performance of a limited scope EIS is vacated.

6. If approved subject to the conditions imposed below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
7. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The preliminary plat application for Star Lake Townhomes, as revised and received on August 7, 2000, is APPROVED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. The final plat shall conform with the preliminary plat design, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant shall obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards, established and adopted by Ordinance No. 11187.
6. The applicant shall obtain the approval of the King County Fire Protection Engineer, to demonstrate compliance with the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.

- a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
 - d. An existing drainage culvert directs off-site flows to the northeast corner of the site, in the vicinity of proposed Lot 9. This off-site flow shall be addressed with adequate conveyance design on the engineering plans.
 - e. A geo-technical report shall be submitted with the engineering plans to address slope stability and pond performance concerns, relative to the fact that the proposed stormwater pond in Tract A will be built within an existing wetland. The report shall provide recommendations for pond design and construction, and indicate whether such recommendations have been included in the applicant's engineering design proposal.
8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) and the following requirements:
- a. The entrance road, the road stub to the east, and the northeast portion of the internal loop road between the entrance road and the east stub road shall be improved to the urban subcollector street standard.
 - b. The remainder of the internal loop road shall be improved to the urban minor access street standard.
 - c. Tract C serving Lots 32 and 33 shall be improved as a joint use driveway, per Section 3.01 of the KCRS. Road improvements for this tract need only be extended as far as the driveway on Lot 32 and a sufficient distance beyond to allow a vehicle on Lot 32 to back out.
- Tract C shall be owned jointly by Lots 32 and 33, with a pedestrian access easement granted to the homeowners in the subject plat and their assigns for the purpose of gaining pedestrian access to S. 280th St. This easement shall also include all necessary access to the tract for the purpose of maintaining the

- pedestrian facilities between the on-site loop road and S. 280th St. A note indicating the ownership of Tract C, that Lots 32 and 33 have joint maintenance responsibility for the joint-use driveway improvements, and the easement rights of the homeowners of the subject plat concerning Tract C shall appear on the final plat.
- d. Bollards shall be placed at the terminus of the above-noted joint-use driveway improvements. From the terminus of the joint-use driveway improvements, a 5-foot-wide asphalt walkway shall be constructed in Tract C to the southeast corner of the Tract, i.e., S. 280th St. If at the time of engineering review for the subject plat, the adjacent portion of S. 280th St. has not been constructed as a paved public road with pedestrian facilities, the aforementioned asphalt walkway shall be extended from Tract C to an appropriate location at the western terminus of the S. 280th St. public road improvements.
 - e. Tract D shall be improved as a private access tract per Section 2.09 of the KCRS. This tract shall be owned and maintained by Lots 5 – 9, as well as by Lot 10 at the developer's option. A note indicating those lots which own and maintain Tract D shall be included on the final plat and engineering plans.
 - f. Right-of-way shall be deeded or dedicated to King County to allow for the construction of the off-site portion of the access road, consistent with the KCRS.
 - g. Ten foot of right-of-way shall be dedicated along the southern portion of the site along 32nd Ave. S., as depicted on the preliminary plat map. (No improvements to this right-of-way are required.)
 - h. Modifications to the above conditions may be considered according to the variance provisions in Section 1.08 of the KCRS; however, neither the required pedestrian walkway improvements to Tract C and the S. 280th St. right-of-way, nor the left-turn lane required by Condition No. 18 may be waived.
- 9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council, prior to final plat recording.
 - 10. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 - 11. Lots within this subdivision are subject to KCC 21A.43 and Ordinance 13673, which imposed impact fees to fund school system improvements needed to serve new development. As a condition of final approval, 50% of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in

effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

12. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

13. The proposed subdivision shall comply with the sensitive areas requirements in KCC 21A.24. Permanent survey marking and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
14. Preliminary plat review has identified the following sensitive areas issues which apply to this project. All other applicable requirements for sensitive areas shall also be addressed by the applicant.
- a. The wetlands on the site, with the exception of Wetlands D and E (which are located in the vicinity of Lots 1, 40 and 41, and 31 and 38), shall have a 50-foot buffer of vegetation as measured from the wetland edge. The wetlands and their required buffers shall be placed in Sensitive Area Tracts. (Note that Wetlands D and E may be filled since they are unregulated by King County.)

- b. A 15-foot building setback line (BSBL) shall be established on the final plat from the edge of the sensitive areas tracts. The BSBL shall be delineated on all affected lots and on Tract B.
- c. Buffer averaging as shown on the site plan dated August 7, 2000 is permitted, per KCC 21A.24.320, provided the total amount of buffer is not reduced and better resource protection is achieved. Mitigation for buffer averaging shall include the use of construction techniques such as retaining walls to reduce buffer impacts, and the replanting of buffer areas that are impacted by road construction. A final buffer averaging/mitigation proposal shall be submitted by the Applicant for review and approval by a DDES Senior Ecologist, during the final engineering review process. (See Condition 14.e, below)
- d. Wetland B, an isolated wetland on the northwest corner of the site, may be modified or filled, subject to providing mitigation consistent with KCC 21A.24. (See Condition 14e below.)
- e. Wetland and buffer impacts associated with the construction of the plat are allowed per Conditions 14c and 14d above, provided a detailed mitigation plan is submitted for approval. Mitigation for these impacts may consist of enhancement, creation, restoration, and/or setting aside additional sensitive areas within Sensitive Area Tracts. The mitigation plan shall be reviewed and approved along with the plat engineering plans by a DDES Senior Ecologist. A performance bond or other financial guarantee shall be provided to guarantee that the mitigation measures are installed according to the approved plans. Once the mitigation work is completed to the satisfaction of DDES, the performance bond may be replaced by a maintenance bond for the remainder of a required five-year monitoring period. The applicant shall be responsible for the installation, maintenance and monitoring of any approved mitigation. The mitigation work must be installed prior to final inspection of the plat
- f. Hydrology to the wetlands which are retained on the site shall be maintained to the extent feasible, as determined by DDES.
- g. Development authorized by this preliminary plat approval or subsequent engineering plan approval may require other state or federal permits, including but not limited to a Washington State Hydraulics Project Approval (HPA) or a U.S. Army Corps of Engineers 404 or Section 10 permit. If federal or state permits are required, these permits must be issued prior to issuance of the final engineering plan approval. Failure to secure these other permits before beginning work authorized by engineering plan approval is a violation of this condition, and may result in suspension or revocation of this permit/approval, and/or pursuing other enforcement actions. Should any other required permit be suspended, revoked or in anyway be subjected to other enforcement actions, this permit may be suspended until all defects causing said enforcement actions have been remedied. In addition, the granting of this permit or subsequent engineering plan approval does not authorize the applicant to violate any provisions of the

Endangered Species Act as set forth at 16 U.S.C. §§ 1531-1543, including the prohibition on the “take” of threatened or endangered species. “Take” is defined at 16 U.S.C. §§ 1532(19).

- h. Notice on title shall be filed, consistent with KCC 21A.24.170.
 - i. Prior to commencing construction activities on the site, the applicant shall mark sensitive areas tracts in a highly visible manner, and these areas must remain so marked until all development proposal activities in the vicinity of the sensitive areas are completed.
 - j. Prior to final approval of construction activities on the site, the boundary between the sensitive area tracts and adjacent land shall be identified using permanent signs. Sign specifications shall be shown on the approved engineering plans.
- 15. Suitable on-site recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children’s play equipment, picnic table[s], benches, etc.).
 - a. An overall conceptual recreation space plan shall be submitted for review and approval by LUSD, with the submittal of the engineering plans. The conceptual recreation plan shall include location, area calculations, dimensions, existing and final grades, and general improvements. The approved engineering plans shall be consistent with the conceptual plan. Partial re-grading of Tract B may be necessary to comply with KCC 21A.14.180.B.1, and may involve the placement of retaining structures in the Tract; provided that, no re-grading of the esker shall be required unless necessary to eliminate a dangerous condition.
 - b. A detailed recreation space plan (i.e., landscape specifications, equipment specifications, etc.) consistent with the overall conceptual plan noted in Item “a” above, shall be submitted for review and approval by LUSD and King County Parks, prior to or concurrently with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements to assure their installation, and the survival of required plantings for a three year period, shall be posted prior to recording of the plat.
- 16. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation and open space areas.
- 17. Street trees shall be included in the design of all road improvements, and shall comply with Section 5.03 of the KCRS.
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage. Spacing may be modified to accommodate sight distance requirements for driveways and intersections. Spacing may also be modified to address problems associated with

the limited street frontage of lots, particularly as this relates to required driveway placement for the proposed townhouse building designs.

- b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Development and Environmental Services (DDES) determines that trees should not be located in the street right-of-way. In making this determination, DDES shall consider the design for the proposed townhouse buildings, the depth of the lots, the width of the road right-of-way, and the requirements of KCC 21A.18.110.F.2 (should the Applicant propose required parking within required street setbacks).
 - c. If DDES determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners or the homeowners' association or other workable organization, unless the County has adopted a maintenance program. This shall be noted on the face of the final plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The Applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
- A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
18. To address Star Lake Townhome's adverse impacts at the intersection of Military Road South and South Star Lake Road, the Applicant, either individually or in conjunction with other developers in the area, shall construct a southbound left turn lane on Military Road at South Star Lake Road. The channelization and illumination plans for this improvement shall be reviewed and approved by King County Traffic Engineering Section prior to engineering plan approval.

19. Tracts F and G shall be designated as Sensitive Area Tracts.

ORDERED this 27th day of December, 2000.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 27th day of December, 2000, to the following parties and interested persons:

Irene Anderson
Mark Baughman
Donna Boltz
Ken Campbell
Gail Crabtree
Mike Davis
Carol Gregg
Richard & Keri Humiston
Susan Junt
Greg Karalus
Richard Kleiber
Alex T. Klouzal
Linda Matlock
Joel Mattson
Lori Michaelson
Eleanor Moon
Garet P. Munger
New Home Trends
Heidi and Ed Plazola

Mike & Debbie Pratum
Geri Reinart
Seattle-King County Health Dept
Beth Smith
Phyllis and Bob Tilley
Tom Touma
Geri Walker
Celia Whitman
Greg Borba
Kim Claussen
Nick Gillen
Lanny Henoch
Kristen Langlely
Aileen McManus
Carol Rogers
Steven C. Townsend
Larry West
Bruce Whittaker

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before January 10, 2001***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before January 17, 2001***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE NOVEMBER 3, 2000 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99P0005 – STAR LAKE TOWNHOMES:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in this hearing and representing the Department were Lanny Henoch, Nick Gillen and Aileen McManus (KCDOT). Participating in this hearing and representing the Applicant were Attorney Robert Johns, Mike Davis of HBR Enterprises, Geri Reinart, Traffic Engineer, of David I. Hamlin & Associates and Celia Whitman, Property Owner. Participating in this hearing and representing the Appellant was Greg Karalus. Other participants in this hearing were Appellant witnesses Mike Pratum and Mark Baugham; Applicant witness Garrett Munger; and Interested Persons Ken Campbell, Carol Gregg, Beth Smith and Debbie Pratum.

The following exhibits were offered and entered into the record on November 3, 2000:

Exhibit No. 1	DDES/LUSD File L99P0005
Exhibit No. 2	DDES/LUSD staff report to the Hearing Examiner, dated November 3, 2000
Exhibit No. 3	Environmental Checklist, received April 2, 1999
Exhibit No. 4	SEPA Determination of Non-significance, issued September 1, 2000
Exhibit No. 5	Affidavit of Posting, received May 20, 1999
Exhibit No. 6	Revised preliminary plat map, received August 7, 2000
Exhibit No. 7	Land use map—Kroll maps 366E and 367W
Exhibit No. 8	King County Assessor maps—SE ¼ & NE ¼ of 33-22-4, and NW ¼ & SW ¼ of 34-22-4.
Exhibit No. 9	September 15, 2000 letter from Gregory Karalus (with Exhibit “A” attached), appealing the SEPA determination.
Exhibit No. 10	Wildlife and Habitat Report, prepared by Terra Associates, Inc., dated March 31, 1999
Exhibit No. 11	Level 2 Analysis, prepared by Touma Engineers, dated October 4, 1999
Exhibit No. 12	Wetland Evaluation/Buffer Averaging Report, prepared by Terra Associates, Inc., dated September 21, 2000.
Exhibit No. 13	Geotechnical Report, prepared by Terra Associates, Inc., dated March 18, 1999
Exhibit No. 14	Traffic Impact Analysis, prepared by David I. Hamlin & Assoc., dated March, 1999.
Exhibit No. 15	May 31, 2000 letter with attachments from Geri Reinart, P.E., of David I. Hamlin & Assoc., containing additional traffic information.
Exhibit No. 16	Memorandum from Connie Blumen, Program Manager, King County Park System, dated October 26, 2000 (in the lower right-hand corner of the document).
Exhibit No. 17	June 8, 1999 letter from Donna Boltz
Exhibit No. 18	Photographs of Star Lake Road and Military Road South, submitted by Appellant
Exhibit No. 19	Federal Way Fire Department Incident Report showing motor vehicle accidents on Military Road South, dated October 28, 2000, submitted by Appellant
Exhibit No. 20	Letter from Marcine Kleiber to Lanny Henoch, dated November 2, 2000, submitted by Appellant
Exhibit No. 21	Letter from Diana Podnar to Lanny Henoch, dated November 2, 2000, submitted by Appellant
Exhibit No. 22	2003 Levels of Service for Start Lake Road/Military Road, submitted by Appellant
Exhibit No. 23	Traffic Signal Warrant Analysis, dated October 28, 2000, submitted by Appellant
Exhibit No. 24	Mailing receipt, dated October 30, 2000, submitted by Appellant
Exhibit No. 25	Drawing by Mr. Pratum, showing main arterials and other developments in relation to Star Lake neighborhood.
Exhibit No. 26	Drawing by Mr. Pratum,
Exhibit No. 27	Drawing by Mr. Pratum,
Exhibit No. 28	Historical traffic counts, 1988-1999, submitted by Ms. Reinart
Exhibit No. 29	Updated traffic counts, dated February 11, 1999, submitted by Ms. Reinart
Exhibit No. 30	King County Pipeline Projects list, dated February, 1999, submitted by Ms. Reinart
Exhibit No. 31	Proposed changes to Conditions 14c, 15 and 17b, submitted by Applicant
Exhibit No. 32	Amended Condition No. 18, submitted by Department
Exhibit No. 33	Amended Condition Nos. 14-17, submitted by Department
Exhibit No. 34	Amended Condition No. 19, submitted by Department

The following exhibit was offered and entered into the record on December 4, 2000:

Exhibit No. 35	Handwritten note by Gail Crabtree
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The following exhibit was offered and entered into the record on December 5, 2000:

Exhibit No. 36 Signal Timing at South Star Lake Road/Military Road South, submitted by Aileen McManus, KCDOT.

The following exhibit was entered into the record administratively on December 20, 2000:

Exhibit No. 37 Letter from Michael Davis, HBR Enterprises (the Applicant) to Hearing Examiner Smith, dated December 20, 2000.

SLS:sje
Plats/L99P0005 RP2